IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

LETTERS PATENT APPEAL NO.119 OF 1987
AND
CIVIL APPLICATION NO.5998 OF 1987
IN
WRIT PETITION NO.2475 OF 1980

Shri Vilas Ratanchand Shah
R/o. New Extension,
At & Post Kagal,
Dist. Kolhapur. .. Appellant
(Orig. Petitioner)

V/s.

1. The State of Maharashtra.

2. The Additional Commissioner
Pune Division, Pune.

3. The Additional Tahasildar
and Chairman,
Surplus Land Degermination Tribunal
(S.L.D.T.) Karvir Division,
Kolhapur. ..Respondents.
(Orig.Respondents.)

Mr. S.M. Kamble for the petitioner.
None for the respondents.

CORAM : R.M.S. KHANDEPARKAR &
ANOOP V.MOHTA, JJ.

DATE : 02/8/ 2005.

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.)

. This is a Letters Patent Appeal filed by the appellant-original petitioner, whereby, the Judgment dated 31st August, 1998, passed in Writ petition No. 2475/1980, wherein the order passed by the Additional

Commissioner dated 16/6/1980, passed in Suo motto Revision was questioned. In the result the appellant's land measuring 29A-35G has been declared in excess under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (For short Mah. Ceiling Act).

2. The appellant-petitioner under Section 12 of the Mah. Ceiling Act submitted his return to the Collector of Kolhapur. The Tahasildar held an enquiry under section 14 (i) of the said Act. After issuing notice under section 17(i) the enquiry was fixed. The parties appeared before the respondent No.3 the Surplus Land Tribunal (for short Tribunal) and led their evidence, including the Talathi of the village. The Additional Tahasildar by the order dated 27/12/1975, declared that the land measuring 12A 00G of the Eastern side of the land of survey No. 486 to be declared and dilimit the surplus land out of the total holding of the landlord-petitioner.

3. The Additional Commissioner, Division Pune, had invoked the provision under section 45(2) of the Mah. Ceiling Act and Suo Motto revised the order dated 27/12/1975, passed by the Tribunal. Accordingly,

notices were issued to the parties. After considering the record, the Additional Commissioner held that the appellant petitioner is entitled to retain the area of 54 acres and the remaining area of 29A-35G is in excess and thereby directed to dilimit the Additional surplus area of 17A-35G after following the procedure as laid down in section 15 and 16 of the Amended Mah. Ceiling Act. The Tribunal had declared 12 A 00G land in excess. The particular reasons for holding the land of the appellant to 83A-35G excluding the pad area of one acre are as follows;

(a) The total area as per the return is 67A-21G.

(b) The area of 3 acre is eligible for the exclusion on account of being uncultivable (Pad) from his total holding.

(c) There is no evidence to the effect that the land is uncultivable.

(d) Extra survey No.421 shows that only one acre can be excluded from holding on account of pad area.

(e) The area 17A 14 G in average as a sugar-cane crop under the Well water of 495/2,494/2,428,60,63/1,56 and 58 classified as land under section 2(5)(b) of the Mah. Ceiling act as the landlord failed to produce any evidence to show that the wells are not coming in "irrigable command" in support of his say or produced the "pass" regarding water permission from the Irrigation Department.

(f) The Additional Commissioner declared total 29A-35G land in excess.

4. The learned Single Judge in the writ petition, after considering the respective submissions of the learned Counsel appearing for the appellant-petitioner, confirmed the above order of the Additional Commissioner.

5. The appellant therefore, preferred this Letters Patent Appeal. The same was admitted on 15/12/1987 and the question of maintainability of the appeal was kept open.

6. Heard the learned Counsel appearing for the

appellant. None appeared for the respondent. As the matter has been pending since 15/12/1987, we are deciding the same on merit.

7. The learned Counsel appearing for the appellant,

basically submitted; the declaration of excess land to the extent of area 17A 14G as additional surplus land is not correct as the wells in question are not under the irrigation command as contemplated under the Act. There was no irrigation project on 19/10/1975. The burden was wrongly put on the petitioner-landlord about the non production of report to show that these 4 wells are not under the irrigation command and the production of the Pass of the irrigation department. Therefore, wrong in holding land under section 2(5)(b), as Sugar-cane crop raised by using private 4 wells. Those Wells are away from the Dudhganga river and are not under the irrigation project constructed or maintained by the Government or the Zilla Parishad. It is not in any irrigable command area. He pointed out that the Dudhganga irrigation project (Kalamwadi) was transferred by the Government as published in Government Resolution

dated 21st February 1986 i.e. after 1/10/1975 i.e. the date of coming into force of Maharashtra Ceiling Act. Therefore, the Additional Commissioner failed to take into consideration this fact before setting aside the order of the Tribunal dated 27/12/1975.

8. Section 2(5)(b)(e) of the Mahrashtra Ceiling Act is reproduced as under;

> "2 (5). In this Act, unless the context otherwise requires:-
>
> (b) Land (other than land falling in clause (c)) which has no assured perennial supply of water for irrigation, but has an assured supply of water for only one crop in a year, this is to say, land irrigated-
>
> (i) seasonally by flow of irrigation from any source constructed or maintained by the State Government or by any Zilla Parishad or from any other natural source of water; or
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> (ii) perennially by a lift (other than a lift referred to in item (ii) of clause (a) from any source constructed or maintained by the State Government or by any Zilla Parishad or from any other natural source of water; or
>
> (iii) Perennially from a privately-owned well situated on land within the irrigable command of any irrigation project, or in the bed of river, stream or natural collection of water or drainage channel (being a river., stream, natural collection of water or drainage channel which is a perennial source of water)."

(e) drycrop land, that is to say, land other than land falling under sub-clause (a),(b),(c) or (d) of this clause.

Explanation.- For the purpose of this clause.-

(1) land situated within the irrigable command of an irrigation project, means all lands which are irrigated or are capable of being irrigated from such project;

(2) land which is irrigated from any source of irrigation specified in sub-clause (a),(b) or (c) and which was used for horticulture (other than the land used for growing of coconut, arecanut, bananas, guava or for vineyards) on or before the 26th day of September 1970 shall be deemed to be land falling under sub-clause (e) until the 4th day of August 1979;

(3) land which is irrigated from any source of irrigation specified in sub-clause (b) shall not be deemed to be land falling under the said sub-clause (b) if the irrigation is provided by a private lift irrigation work operated by diesel or electric power or operated by both methods and constructed after the 15th day of August, 1972)."

8A. If the Dudhganga irrigation project (Kalamwadi) was first administratively approved by the Government G.R. Dudh/1175 (45) II(3) dated 21/2/1976 as contended in the written submission filed by the appellant, which was admittedly, after the effective date of the Mah.Ceiling Act i.e. 1/10/1975/2/10/1975. Then all the reasoning related and connected to the said Dudhganga Irrigation Project cannot be accepted to reverse the finding of the Tribunal dated 27/12/1975.

9. In the present case there are 4 private owned wells which are away from 1500 to 2000 feet from the land survey Nos. 428, 495(2), 494,60, 63/1, 56 and 58. These land therefore, cannot be treated as land which fall under the ambit of section 2(5)(b)of the Mah Ceiling Act. There is nothing on record to show that the Wells situated within the "irrigable command" of irrigation project or bed of the river, stream, or natural collection of water or drainage channel. There is nothing on the record to show that the land are within the area where the land owner irrigating the land through the Well situated in irrigation command. Therefore, the declaration of excess of area of 17A-14G as surplus land is not correct.

10. The Commissioner according to us wrong in putting burden of proof on the appellant-landlord to show that these wells are not under the irrigation command and nor he has produced the pass of the irrigation department on the record. If the land is situated in a particular area and the return is filed accordingly, the burden lies upon the respondent-Government to prove that these lands are in

excess and it fall within the ambit of the respective definition. It is wrong to put burden on the landlord to place on record the negative evidence that these well are not under the irrigation command and or to produce such pass of the irrigation department.

11. The Tribunal after considering the merit on the record including the evidence and the inspection of the Talathi rightly declared that only 12 Acre and 00 gunthas of land is in excess. There is nothing on the record to suggest that the appellant-landlord at any point of time was taking water from Dudhganga project for the land. There is no contrary evidence to suggest that the land owner was not yeilding the Sugar-cane crop of the land in question from his 4 private owned 4 Wells. There is nothing on the record to suggest that these 4 wells falls within the irrigation command area of a project or natural source of tank.

12. The appellant-owner was taking water for 3 acres in summer season by digging well every year and preserving the standing crop and the land towards in RR. This itself cannot be the reason to cover whole crop of sugar-cane, standing on the said land. Therefore, the

conclusion arrived at by the Additional Commissioner is wrong including the reason to the effect that the declaration of Additional 17 A-14 G as the excess land. The Additional Commissioner therefore, wrong in observing that the lands were irrigable through the privately owned well situated in irrigable command of irrigation project. There was nothing on the record to show that land fall within the irrigable command of irrigation project. Therefore, there was no question of shifting the burden on the appellant-petitioner Landlord to prove otherwise. There was no appeal preferred by the appellant against the order of SLD Tribunal by the appellant. The view taken by the Additional Commissioner is not correct as not backed by any documentary proof and material.

13. The confirmatory order by the Single is therefore, is not acceptable. The holding as per the finding arrived at by the fact finding S>L.D. Tribunal needs to be maintained. The additional declaration by the Additional Commissioner is not correct. In view of this we are of the view that the total holding on 2/10/1975 of the appellant are 67A-21G and he is entitled to hold the land 54A 10G only.

14. For the above reasons no order is necessary on the Civil Application 5998/87, filed by the appellant for bringing additional evidence on the record. Even no case is made out for filing and bringing such documents first time in the Letters Patent Appeal, as it was not filed even in the writ petition. Therefore Civil Application is also disposed of.

15. Therefore, the impugned judgment dated 31st August 1998 and the order of the Additional Commissioner dated 16/6/1980 are set aside and the order dated 27/12/1975 passed by the Tribunal and all the respective directions therein, are restored and maintained. In view of this reasoning the present LPA is allowed and C.A.No.5998/1987 is disposed of. There shall be no order as to costs.

[R.M.S. KHANDEPARKAR, J.]

[ANOOP V. MOHTA, J.]